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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/922,425

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Gary Mittman

R258-DB

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05/26/2010

BELASCO, JACOBS & TOWNSLEY LLP

HOWARD HUGHES CENTER

6701 CENTER DRIVE WEST

14th Floor

LOS ANGELES, CA 90045

EXAMINER

RETTA, YEHDEGA

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GARY MITTMAN and ETHAN JOFFE

Appeal 2009-015433
Application 09/922,425
Technology Center 3600

Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 CFR §41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on September 21, 2009. A Docketing Notice was mailed on October 2, 2009.

Claims 1-8 of the instant application contain functional language that may be indefinite under 35 U.S.C. § 112, 2nd paragraph. *See Ex Parte*

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Rodriquez, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008 the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled "Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph", located at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf. Thus, there is a question as to whether claims 1-8 and the claims which depend upon these claims, meet the requirements of being definite under 35 U.S.C. § 112, 2nd paragraph.

Accordingly, it is ordered that the application is remanded to the Examiner to determine if claims 1-8 and the claims which depend upon these claims, meet the requirements of 35 U.S.C. § 112, 2nd paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/KE

BELASCO, JACOBS & TOWNSLEY LLP
HOWARD HUGHES CENTER
6701 CENTER DRIVE WEST
14th Floor
LOS ANGELES CA 90045